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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CAMERON MATTHEW PARKER,

Defendant and Appellant.

D073656

(Super. Ct. No. SCD271752)

APPEAL from a judgment of the Superior Court of San Diego County, Kenneth K. So, Judge. Affirmed.

Joanna McKim, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Lynne G. McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Cameron Matthew Parker of first degree felony murder (Pen. Code, §§ 187, subd. (a), 189, subd. (a))¹ and found that he personally used a deadly or dangerous weapon in the commission of the offense (§ 12022, subd. (b)(1)). The trial court sentenced Parker to an indeterminate term of 25 years to life imprisonment.

On appeal, Parker contends (1) the trial court erred in its response to a jury question during deliberations and (2) the evidence does not support his first degree murder conviction. We disagree with these contentions and affirm.

FACTS

For purposes of this section, we state the evidence in the light most favorable to the judgment. (See *People v. Osband* (1996) 13 Cal.4th 622, 690; *People v. Dawkins* (2014) 230 Cal.App.4th 991, 994.) Additional facts will be discussed where relevant in the following section.

Parker was staying with his girlfriend in a low-end motel in the Pacific Beach neighborhood of San Diego. His girlfriend was living at the motel; Parker had stayed there for the past couple days. The victim, Joaquin T., also lived at the motel with his girlfriend. Parker's girlfriend had a history of flirting with Joaquin.

On April 14, 2017, Joaquin's girlfriend went to do laundry, leaving Joaquin in their motel room naked. Joaquin began exchanging text messages with Parker's girlfriend. Joaquin asked, "What u doin?" Parker's girlfriend responded, "What do you have in mind[?]" Joaquin: "Just seeing what's up. I was going to come over. But [my

¹ Further statutory references are to the Penal Code.

girlfriend] went to do laundry so I'm stuck here naked. U got a bowl?"² Parker's girlfriend: "Ya want me to cum to you?" Joaquin: "Yes." Parker's girlfriend: "Ok is it unlocked[?]" Joaquin: "Yes."

Parker's girlfriend showed Parker the text messages. Parker went to confront Joaquin, but he did not go directly to Joaquin's motel room. Instead, he took a detour toward some bushes and retrieved a knife in a nylon sheath. His route took him past a friend of Joaquin's girlfriend, who was outside waiting for her to return. The friend later testified that Parker looked extremely angry.

Parker knocked on Joaquin's door, and Joaquin said, "Come in." Parker burst through the door and attacked Joaquin, who was lying naked in bed. Parker punched Joaquin several times and slashed him with the knife. During the struggle, Parker grabbed a microwave and threw it at Joaquin, hitting him in the head. Outside, the friend heard Parker yelling something like, "You tried to rape her, you little shit," and Joaquin screaming.

The noise drew the attention of a housekeeper, who saw Parker's girlfriend standing outside Joaquin's room. The housekeeper asked Parker's girlfriend about the noise, so she opened the door and told Parker the housekeeper was outside. Parker exited the room, looked at the housekeeper, and said, "That's what he gets." Parker appeared unharmed. He and his girlfriend left the motel. Parker later texted someone, "Drug attic [sic] fucking lame is around her hotel, have been being really creepy. Some dude texted

² A "bowl" in this context means something used to smoke narcotics.

her while I was there saying he was naked and shit. Got her number from his girlfriend's phone. I put a stop to it. And now it's really hot."³

The housekeeper went into Joaquin's motel room, followed by the friend who had been waiting outside. The room was in shambles. The bed had been tossed around, and there was broken glass everywhere. Joaquin was bleeding heavily, and there was blood on the floor, on the walls, and on the bed. Joaquin was in pain, and he was having trouble breathing. The friend helped clean up the room. He put into a duffle bag various potentially illicit items, including pills, drug paraphernalia, and two knives. The friend believed one of the knives belonged to Joaquin, but both knives were similar to the knife he had seen Parker carrying before the attack.

The friend eventually called 911. Police and paramedics arrived. Joaquin was transported to a hospital. He had suffered wounds to his head, as well as four broken ribs. Joaquin had several preexisting health problems, which were caused in part by chronic methamphetamine use, and he died at the hospital a week later. The medical examiner concluded that Joaquin's death was caused by complications from recent blunt force trauma with rib fractures. Contributing factors were pulmonary hypertension and methamphetamine abuse. The medical examiner classified the manner of death as homicide.

At trial, Parker testified in his own defense. He admitted that his girlfriend showed him the text messages she had exchanged with Joaquin. He also admitted going

³ "Hot" means there was a lot of police activity.

to Joaquin's motel room, but he claimed he only wanted to talk with him. He denied retrieving a knife from the bushes or having a knife when he confronted Joaquin. Parker said that Joaquin reached for his own knife when Parker entered the room, which caused Parker to react with violence. Parker admitted punching Joaquin several times in the chest and throwing the microwave at Joaquin's head. He claimed that he wrestled Joaquin for the knife, and it fell to the ground. He explained that his comment to the housekeeper ("That's what he gets") meant that that was what Joaquin gets for pulling a knife on him.

DISCUSSION

I

Jury Instructions During Deliberations

An important disputed issue at trial was Parker's intent when he entered Joaquin's motel room. The trial court's jury instructions covered the issue of intent primarily in two slightly modified form instructions, CALCRIM Nos. 540A and 1700.

CALCRIM No. 540A told the jury, in relevant part, "The defendant is charged in Count 1 with murder under a theory of felony murder. To prove that the defendant is guilty of first-degree murder under this theory, the People must prove that, one, the defendant committed residential burglary; two, the defendant intended to commit residential burglary; and, three, while committing residential burglary, the defendant caused the death of another person. [¶] . . . To decide whether the defendant committed residential burglary, please refer to the separate instructions that I will give you on that crime. You must apply those instructions when you decide whether the People have

proved first-degree murder under a theory of felony murder. [¶] The defendant must have intended to commit the felony of residential burglary before or at the time that he caused the death."

CALCRIM No. 1700 told the jury, in relevant part, "The defendant is alleged to have caused the death of another while committing a residential burglary in violation of Penal Code Section 459/460. To prove that the defendant is guilty of this crime, the People must prove that, one, the defendant entered a building; and, two, when he entered a building, he intended to commit assault with a deadly weapon, assault with force likely to produce great bodily injury or battery with serious bodily injury. [¶] . . . [¶] A burglary was committed if the defendant entered with the intent to commit assault with a deadly weapon, assault with force likely to produce great bodily injury or battery with serious bodily injury."

During deliberations, the jury asked a question about intent. It wrote, "Request clarification on a point of law specific to establishing 'intent' to commit the felony of residential burglary. To quote, [']The defendant must have intended to commit the felony of residential burglary before or at the time that he caused the death.['] Does intent need to be established prior to crossing the threshold?"

The trial court presented the note to the prosecutor and defense counsel. Parker's counsel responded, "I would just leave the instructions as they are, Judge, because those are the instructions and they have to live or die by those instructions. So that's my only comment. I would object to further instructions." The court indicated that it would not give any further instructions, but it proposed to refer the jury to the previous instructions

on intent, CALCRIM Nos. 540A and 1700. Parker's counsel objected. He said, "I would just say that I don't think we should highlight any instruction. And I would just say tell them to refer back to the instructions in general as a whole and not pinpoint anything. That's my only comment." The court noted Parker's objection but decided to proceed as it had proposed. The court wrote to the jury, "Please refer to instructions 540A and 1700."

Parker contends the court erred in its response to the jury's question about intent. He argues, "The trial court should have instructed the jury that the jury could find [Parker] guilty of felony murder based on burglary only if the entry in the motel room was with the requisite intent, set forth in CALCRIM [No.] 1700 (intent to commit assault with deadly weapon, assault with force likely to produce great bodily injury, or battery with serious bodily injury) . . . , and that if, at the time of entry, appellant lacked this intent, then he could not be convicted of first-degree felony murder based on burglary as the underlying felony."

The trial court has a statutory duty to provide a deliberating jury with information "on any point of law arising in the case." (§ 1138.) "However, '[w]here the original instructions are themselves full and complete, the court has discretion under section 1138 to determine what additional explanations are sufficient to satisfy the jury's request for information.' " (*People v. Brooks* (2017) 3 Cal.5th 1, 97; accord, *People v. Beardslee* (1991) 53 Cal.3d 68, 97.) Here, the court's original instructions were full and complete. The court therefore had discretion to determine whether to provide additional instructions.

Parker has not shown the court abused its discretion here. The jury sought guidance on the issue of intent, and the court considered how best to assist the jury. It decided to refer the jury to its prior instructions addressing intent. Those instructions properly defined the intent required for felony murder and the intent required for residential burglary, which are related but distinct. The court could have reasonably determined that its response was sufficient to address the jury's potential confusion on that issue. "[T]he trial court does not abuse its discretion when it determines the best way to aid the jury is by directing the jury to reread the applicable jury instructions that 'are themselves full and complete.'" (*People v. Lua* (2017) 10 Cal.App.5th 1004, 1017; see *People v. Davis* (1995) 10 Cal.4th 463, 521-522 [no abuse of discretion in directing jury to the court's original instructions]; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1213 [same]; *People v. Montero* (2007) 155 Cal.App.4th 1170, 1179 [same].) The jury did not indicate, by note or otherwise, that the court's response was inadequate in any way.

Parker appears to argue that his proposed instruction would have been more helpful to the jury than the court's response. But his counsel did not propose this instruction when the court considered the jury's note. Instead, he suggested that the court simply refer the jury back to the original instructions as a whole. Parker has therefore forfeited any argument that the trial court abused its discretion by not providing his instruction. Where, as here, "the instructions given were adequate, and defense counsel had ample opportunity to suggest additional clarifying instructions below and failed to do so," any argument based on such additional instructions is forfeited. (*People v. Dement* (2011) 53 Cal.4th 1, 46; see *People v. Thoi* (1989) 213 Cal.App.3d 689, 698.)

II

Sufficiency of the Evidence

Parker next contends the evidence does not support his conviction for first degree felony murder. "In evaluating defendant's claim, 'we review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] "Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]" [Citation.] A reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support' " the jury's verdict.' " (*People v. Manibusan* (2013) 58 Cal.4th 40, 87 (*Manibusan*).)

In order to convict Parker of first degree felony murder, on the theory that he committed the murder in connection with a burglary, the jury was required to find that he entered Joaquin's motel room with the felonious intent required for burglary. (See § 459;

People v. Proctor (1992) 4 Cal.4th 499, 533.) "Regarding a specific intent element of a crime, [our Supreme Court has] explained that '[e]vidence of a defendant's state of mind is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction.' [Citation.] Moreover, the standard of review that applies to insufficient evidence claims involving circumstantial evidence is the same as the standard of review that applies to claims involving direct evidence. 'We "must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]" [Citation.] "Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.]" [Citation.] Where the circumstances reasonably justify the trier of fact's findings, a reviewing court's conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment's reversal.' " (*Manibusan, supra*, 58 Cal.4th at p. 87.)

We conclude the evidence supports Parker's conviction on the theory that Parker entered Joaquin's motel room with the intent to assault Joaquin with a deadly weapon. Viewed in the light most favorable to the prosecution, the evidence shows that Parker was angry with Joaquin for flirting with his girlfriend. Knowing that Joaquin had left his door unlocked and was naked, Parker left his hotel room and retrieved a knife from the bushes near the motel. With the knife in hand, Parker knocked on Joaquin's door, burst inside, and attacked Joaquin. The quick succession of these events, as well as Parker's

obvious motive, show that Parker planned and intended to attack Joaquin with the knife when he entered Joaquin's motel room.

We reject Parker's claim that the evidence was insufficient to support the finding that he carried a knife when he entered Joaquin's hotel room. Joaquin himself told police that his attacker pulled out a knife. And, while not necessary, Joaquin's statements were corroborated by the testimony of the friend of Joaquin's girlfriend, who saw Parker carrying a knife when he walked towards Joaquin's room. The friend repeatedly testified at trial that he saw a knife in Parker's hand. And, to the extent there was any ambiguity in the friend's testimony (and we do not see any), we must draw all reasonable inferences in favor of upholding the judgment.

Parker points out that there was no history of altercations or disagreements between him and Joaquin. Such evidence is not required to convict Parker. Parker also argues that the exchange of text messages may have been primarily about drugs, rather than about a romantic encounter. But the evidence shows that Parker, at least, interpreted them as romantic, since during the attack he accused Joaquin of attempting to rape his girlfriend. Regardless of their meaning, the text messages upset Parker and prompted him to retrieve his knife and attack Joaquin. The evidence supports Parker's conviction.

DISPOSITION

The judgment is affirmed.

GUERRERO, J.

WE CONCUR:

McCONNELL, P. J.

DATO, J.